

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.259 of 1993

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1. Manju Devi, daughter of Sohawan Singh  
2. Sohawan Singh, son of late Kokil Singh  
3. Bijoy Singh, son of Sohawan Singh  
All residents of village Dhanraj Tola, P.S. Khushrupur, District Patna.  
..... Appellants

Versus

State of Bihar

..... Respondents

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**Appearance:**  
For the Appellants : Mr. Ashwani Kumar Sinha, Advocate  
For the State : Mr. Ajay Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**  
**and**  
**HONOURABLE MR. JUSTICE VIKASH JAIN**  
ORAL JUDGMENT  
**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**  
**Date: 18-01-2017**

The present appeal is directed against the judgment and order dated 12.05.1993 passed in Sessions Trial No. 369 of 1990 by the Additional Sessions Judge IInd, Patna convicting the appellant Manju Devi under Section 498A of the Indian Penal Code and sentencing her to one year rigorous imprisonment. The other two appellants being Sohawan Singh, being the father-in-law of the deceased and Bijoy Singh, the husband of the deceased have been held guilty under Section 304B and Section 498A of the Indian Penal Code and have been sentenced to rigorous imprisonment for life. They have been acquitted for the offences under Section 3 and 4 of the Dowry Prohibition Act.

2. Heard Mr. Ashwani Kumar Sinha, learned counsel in support of the appeal and Mr. Ajay Mishra, learned APP for the State and



perused the records.

3. It is not in dispute that the marriage between the deceased Kiran Devi and the appellant Bijoy Singh took place in the year 1986. In the month of '*Kartik*' in the year 1988 when the deceased had to return from parental house to her matrimonial house the appellant Bijoy Singh, husband refused to go for the ceremony being displeased with regard to non-fulfillment of his demand for a television. Other members of the family went and took '*bidai*' of the deceased and she came to her matrimonial home. It is then alleged that on 17.08.1989 when the informant PW 4 Balkishun Singh was going to take bath in the river Ganga he came to know that his daughter, for non-fulfillment of dowry demand of a television, had been killed and her dead body was put on the Railway track to show that she had been killed by train accident and then the dead body was thrown in river Ganga. He went to the village of his son-in-law and made enquiry, but could not find his daughter. Upon his information the police registered the First Information Report and took up the investigation and in course thereof the dead body of his daughter Kiran Devi was recovered from river Ganga tied with two sarees along with bricks tied to her body. Her head had virtually been severed. Upon investigation charge sheet was filed against the appellants. They were tried and they pleaded innocence. Upon trial they were found guilty and punished as noted above.

4. In order to prove the charge, the prosecution has examined



seven witnesses. PW 1 Meghan Singh is the son of the informant, PW 2 Musafir Singh is the brother of the informant, PW 3 is a formal witness, PW 4 Balkishun Singh is the informant, PW 5 who was the official who proved the sanction order under Dowry Prohibition Act. PW 6 is the Doctor, Dr. Ashok Kumar Yadav who performed the post mortem and PW 7 is the Investigating officer Sidheshwar Prasad. The prosecution sought to prove that the death took place within seven years of marriage; there had been demand for dowry soon before the death; the deceased died under unnatural circumstances; and that the accused persons were thus guilty of offence under Section 304B of the Indian Penal Code by virtue of Section 113B of the Evidence Act. The appellant Manju Devi, being married sister-in-law of the deceased though not convicted under Section 304B of the Indian Penal Code was convicted under Section 498A of the Indian Penal Code and sentenced only to one year rigorous imprisonment.

5. The defence has examined two witnesses who are co-villagers being DW 1 Horil Singh and DW 2 Rameshwar Singh. They only suggest that on the occasion of 'Rakhi' the deceased had gone to her parental house.

6. One important fact we may notice is that the village of the accused persons is Dhanraj Tola which is situated North of the main Railway line and the village of the informant is Budhu Chak which is South of the main Railway line. River Ganges is beyond Dhanraj Tola to



the North, not far away.

7. We may first notice certain evidences that were found along the Railway track such as pieces of torn under garments and blouse of the deceased. There is a seizure list for that duly proved. There were blood stains there as well. Then there is inquest report (Exhibit 8) which clearly shows that the dead body was found submerged under water weighed with three bricks in about five feet of water. There was an abandoned cot also found nearby.

8. According to learned APP Mr. Ajay Mishra the fact that the death took place within seven years of marriage is not in dispute. The fact that the son-in-law, appellant Bijoy Singh did not come for the '*bidai*' ceremony being aggrieved by non-gift of a television is not disputed. This was some time before the death i.e. '*Sawan*' of 1988, whereas this incident took place just about a year thereafter. The death occurred in unnatural circumstances which is also not disputed. He thus submits that in terms of Section 113B of the Evidence Act in absence of defence establishing its innocence, guilt is to be presumed. On the other hand, Mr. Ashwani Kumar Sinha, learned counsel for the appellants submits that so far as appellant Manju Devi is concerned, she is the married sister-in-law of the deceased having two children, *per se* her involvement is doubtful. So far as the father-in-law, the appellant no. 2 Sohawan Singh is concerned, as per prosecution evidence itself, upon refusal of the husband to go to receive his wife



being aggrieved by non-gift of a television, he along with other members of the family went to receive his daughter-in-law. These two facts clearly absolve appellant Manju Devi and Sohawan Singh from the guilt. In respect of appellant Bijoy Singh, the husband of the deceased, it is stated that the evidence by two witnesses have suggested that the deceased was not at that time at her matrimonial house, rather she was at her parental house. Thus, on behalf of the appellants it is submitted that the conviction and sentence is misconceived.

9. We have considered the evidences. To us the submission of the learned APP is correct, but not wholly. So far as the married sister-in-law Manju Devi is concerned, her involvement is doubtful. It is not that only recently she had been married, but she had two children. In our view, her involvement cannot be held beyond reasonable doubt. The trial Court itself acquitted her of the charges under Section 304B of the Indian Penal Code and convicted her under Section 498A of the Indian Penal Code alone and sentenced to one year rigorous imprisonment. So far as she is concerned, the evidence is not convincing enough to hold her guilty even under Section 498A of the Indian Penal Code. To us she has to be thus acquitted.

10. So far father-in-law of the deceased Sohawan Singh is concerned, from the evidence of the prosecution itself it is established that he had no grievance, rather when his son, the appellant Bijoy Singh, protested and as a mark of protest refused to go to bring his wife



back, the appellant Sohawan Singh and others went and performed the '*bidai*' ceremony and brought her back. Thus, to say that he was demanding a television does not appear to be correct. To the contrary, the specific evidence of the prosecution is that his son Bijoy Singh was the person demanding television as dowry after marriage and played tantrums by misbehaving with his wife. That being so, the father-in-law Sohawan Singh could not have been guilty for the offence under Section 304B or Section 498A of the Indian Penal Code and is accordingly to be acquitted.

11. But when we come to the case of the husband i.e. Bijoy Singh, his case is totally different. The evidence of the prosecution is consistent that it is he who was demanding television and not being supplied by his father-in-law, the informant, he used to ill-treat the girl, i.e. his wife. The marriage had taken place about three years at the time of the death. The death was a gruesome killing. The evidence is that having been killed she was put on the Railway track and cut by train. There is evidence of blood along the Railway track with pieces of her torn under garments and blouse. These are seized and led in evidence. Not being satisfied, she was then tied with bricks to ensure that her body would sink in river Ganga and disappear. This clearly shows that her death was neither natural nor suicidal, but clearly homicidal. Thus under the circumstances, it was for the appellant Bijoy Singh to explain as to how his wife died or how he was not at all responsible for his



wife’s death. He has not been able to explain anything. The presumption under Section 113B of the Evidence Act would thus arise and that presumption has been correctly invoked by the trial Court. The consequence of failure to discharge the said presumption is conviction. Thus, the appellant Bijoy Singh has rightly been convicted and we see no reason to interfere.

12. Thus in the result, the appeal insofar as the appellants Manju Devi and Sohawan Singh are concerned, is allowed. They are acquitted of the charges and are discharged from their bail bonds. The appeal of the appellant Bijoy Singh is dismissed and the conviction and sentence is confirmed. He is directed to surrender before the learned Trial Court forthwith for serving out the sentence.

13. Let the lower Court records be returned forthwith.

**(Navaniti Prasad Singh, J)**

**(Vikash Jain, J)**

Chandran

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